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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/801,741	03/16/2004	Jay F. Kunzler	P03074d1	1847
23702	7590	05/02/2007	EXAMINER	
Bausch & Lomb Incorporated			NWAONICHA, CHUKWUMA O	
One Bausch & Lomb Place			ART UNIT	PAPER NUMBER
Rochester, NY 14604-2701			1621	
			MAIL DATE	DELIVERY MODE
			05/02/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	10/801,741	KUNZLER ET AL.
	Examiner Chukwuma O. Nwaonicha	Art Unit 1621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 December 2006.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 17-29 is/are pending in the application.
- 4a) Of the above claim(s) 30-33 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 17-29 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) Notice of Informal Patent Application
- 6) Other: \_\_\_\_\_.

***DETAILED ACTION***

***Current Status***

1. This action is responsive to Applicants' amendment of 29 December 2006.
2. Receipt and entry of Applicants' amendment is acknowledged.
3. Claims 17-33 are under active consideration in the instant application.
4. The rejection claims 17-29 under 35 U.S.C. 103 as being unpatentable over Refojo et al., {US 5,336,487} for the reasons set forth in the previous Office Action of 10/06/2006 is maintained.

Newly submitted claims 30-33 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 17-29 are drawn to a method of using a tamponade in an ophthalmic surgical procedure while claims 30-33 are drawn to a vitreoretinal composition, and these are two different inventions.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 30-33 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Applicants' argument and amendment filed 8 January 2007 have been fully considered but they are not persuasive. Applicants argue that they are not claiming the use of a tamponade that contains any type of silicon oil, but rather, a very particular type of silicon oil that is purified by supercritical carbon dioxide extraction.

Also, applicants concede that the use of silicon oil, as a vitreous fluid is known, and that the purification of silicon oil by supercritical CO<sub>2</sub> extraction is also known at the time of the invention. Applicants contend that what is not known, or more importantly, not obvious to one of ordinary skill in the art, is to use a silicon oil that is purified by supercritical CO<sub>2</sub> extraction as a tamponade in ophthalmic surgery. The use of highly purified silicone oil by supercritical CO<sub>2</sub> extraction is well known in the art as admitted by applicants, also see Hiroyuki et al., JP 06-107796 and Hiroyuki et al., JP 05-043699. The Examiner notes that the use of highly pure chemicals especially in the medical field is recommended as opposed to contaminated chemicals. Therefore, one of ordinary skill in the art, specifically, in the medical field will know that highly purified silicon oil will perform better the less purify or contaminated silicon oil when used as a tamponade in ophthalmic surgery. The use of purified silicone oil by supercritical CO<sub>2</sub> extraction does not constitute a patentable distinction. The instantly claimed invention would therefore have been obvious to one of ordinary skill in the art.

**THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed,

and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Chukwuma O. Nwaonicha whose telephone number is 571-272-2908. The examiner can normally be reached on Monday thru Friday, 8:30am to 5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman k. Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Art Unit: 1621

  
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